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DISTRICT COURT
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DISTRICT OF UTAH
BY: _____
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Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LESTER JAY MABE,

Defendant.

MOTION TO DISMISS

Case No.2:03CR00986

Judge Ted Steward

COMES NOW the Defendant, by and through his Attorney, Paul Gotay, and moves this Court to Dismiss Counts 1, 2 and 3 of the Indictment.

Defendant bases his Motion on the following

Computer images of children engaging in sexually explicit conduct is not a crime for any pornography found in Defendant's possession has been altered by computer to look like actual children is fake. The U.S. Supreme Court in Ashcroft, Attorney General, et al v. Free Speech Coalition, decided in April 10, 2002, stated that the Child Pornography Prevention Act of 1996,

10

which includes the laws Defendant is indicted under violates the First Amendment rights of free speech, for it is overly broad and unconstitutional.

Defendant further asserts that child images portrayed can not be positively identified as those of a minor on the basis of any analysis. Therefore, any opinion regarding age identification would, at most, be an opinion based on probability. Probability evidence has been routinely excluded by the courts when as in this case, it would tend to cause the jury to focus upon a seemingly scientific conclusion rather than where the truth lies. See Rules 401, Utah Rules of Evidence; State v. Rammel, 721 P.2d 498 (Utah 1986).

In the alternative, even if age testimony is found to be relevant, Defendant asserts that it should be suppressed. Since a positive age identification could not possibly be established, opinions as to age identification would be extremely prejudicial.

DATED this 12 day of January, 2004.

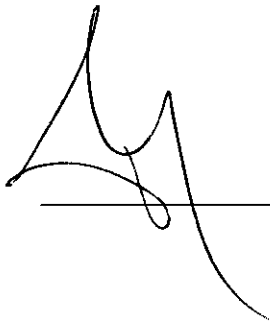


Paul Gotay
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing MOTION TO DISMISS, was either hand-delivered or mailed by United States mail, postage prepaid, this 12 day of January, 2004, to the following:

Paul G. Amman
Attorney for the United States
1855 South State Street
Salt Lake City, Utah 84111



A handwritten signature in black ink, appearing to be 'P. Amman', is written over a horizontal line.